

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 17-01507

PRESENT: SMITH, J.P., CARNI, DEJOSEPH, NEMOYER, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROGER CORNELL, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ALAN WILLIAMS OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (MATTHEW B. POWERS OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Russell P. Buscaglia, A.J.), rendered July 24, 2017. The judgment convicted defendant, upon his plea of guilty, of attempted arson in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him, upon his plea of guilty, of attempted arson in the second degree (Penal Law §§ 110.00, 150.15). Contrary to defendant's contention, the sentence is not unduly harsh or severe. We note that the uniform sentence and commitment form incorrectly states that defendant was indicted on one count of arson in the second degree and a separate count of attempted arson in the second degree, and that he only pleaded guilty to the latter count. The form must therefore be amended to correctly state that defendant was indicted on a single count of arson in the second degree, and that he pleaded guilty to attempted arson in the second degree as a lesser included offense of the sole count of the indictment (*see generally People v Alexander*, 160 AD3d 1370, 1372 [4th Dept 2018], *lv denied* 32 NY3d 1001 [2018]).

Entered: April 26, 2019

Mark W. Bennett
Clerk of the Court